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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 UNITED STATES OF AMERICA,
11 Plaintiff,
12 v.
13 YING WAI WONG,
14 Defendant.

Case No. CR06-5668FDB

ORDER DENYING DEFENDANT
WONG'S MOTION TO SUPPRESS

15 Defendant Wong moves to suppress evidence illegally seized and statements improperly
16 taken by government law enforcement officials. Specifically, Defendant argues that the government
17 agents exceeded the scope of the first warrant that they obtained, which allowed them to search for
18 evidence of illegal entry. The issues have been fully briefed, a suppression hearing was held on May
19 10, 2007, additional briefing on the issue of border searches has been submitted, and the Court is
20 fully informed and denies Defendant Wong's motion to suppress evidence and statements.

21 ***The Searches***

22 The warrant allowed the agents to look for indicia of ownership and occupancy, papers that
23 would establish citizenship, and any electronic devices that would establish routes of travel. When
24 they entered the boat cabin, they found five duffle bags and a small suitcase on the bunk. SA

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1 Gleckman opened one of the bags and discovered vacuum-sealed packages that contained pills of
2 various colors. A field test was performed, and the pills tested positive for the properties of MDMA.
3 The agents then sought an addendum to the first warrant, which would cover narcotics and related
4 evidence. While the agents were waiting for the Superior Court Judge to call them back, they
5 proceeded to open all of the bags, finding pills in all of them.

6 Defendant Wong argues that there were no exigencies or other justification for continuing the
7 search without authorization; instead of waiting for the Judge to amend the warrant, the agents
8 conducted a warrantless search.

9 There is an exception to the warrant requirement for searching vehicles because of their
10 mobility; thus, in *Carroll v. United States*, 267 U.S. 132 (1925), the Supreme Court held that
11 vehicles may be searched without warrants if the officer undertaking the search has probable cause to
12 believe that the vehicle contains contraband. “[T]he justification to conduct such a warrantless
13 search does not vanish once the car has been immobilized; nor does it depend upon a reviewing
14 court’s assessment of the likelihood in each particular case that the car would have been driven away,
15 or that its contents would have been tampered with, during the period required for the police to
16 obtain a warrant.” *Michigan v. Thomas*, 458 U.S. 259, 261 (1982).

17 In this case the boat had been brought out of the water and was up on the trailer, which was
18 attached to the Defendants truck, all of which had been towed out of the water by the Agents’ truck.
19 Defendant Ho, who had been driving the boat, gave his consent to Agent Gleckman to search the
20 boat. Because the boat’s small cabin was locked, the Agents sought a search warrant for documents
21 indicating ownership, areas of travel, and other evidence of illegal entry into the United States.
22 Upon entry of the small cabin, and finding that the first bag opened contained pills testing positively
23 for MDMA, the Agents went back to the Judge to obtain an addendum to the first search warrant to
24 search for evidence of drugs.

25 At the point when the Agents found the pills testing positively for MDMA, they had probable
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1 cause to believe that the boat was being used to smuggle drugs, and under federal law, *Carroll* and
2 its progeny, were authorized to search the boat without a warrant. Moreover, the initial search
3 warrant did not become invalid at the instant the drugs were found, nor did application for an
4 addendum to the original search warrant negate their authority to search. The agents were still
5 entitled to rely on the original search warrant in opening the other bags to see whether there was
6 evidence of illegal entry into the United States, and the agents also had probable cause to search
7 based on a belief that the boat was being used to smuggle drugs.

8 **Border Search**

9 The parties have submitted additional briefing on the subject of border searches as applied to
10 this case. Having considered the parties' submissions, the Court concludes that the ICE agents in
11 this case had a reasonable suspicion that the defendants were involved in criminal activity and
12 conducted a legal search of the boat.

13 The parties apparently agree that when a search does not occur at a permanent border
14 checkpoint or the functional equivalent thereof, reasonable suspicion to conduct the search is
15 required. In *United States v. Sahanaja*, 430 F.3d 1049, 1054 (9th Cir. 2005), the Court noted that
16 reasonable suspicion of criminal activity is required to conduct an extended border search and
17 referenced "extended border search doctrine" articulated in *Alexander v. United States*, 362 F.2d
18 379, 382 (9th Cir. 1966):

19 Where ... a search for contraband by Customs officers is not made at
20 or in the immediate vicinity of the point of international border
21 crossing, the legality of the search must be tested by a determination
22 whether the totality of the surrounding circumstances, including the
23 time and distance elapsed as well as the manner and extent of
24 surveillance, are such as to convince the fact finder with reasonable
certainty that any contraband which might be found in or on the
vehicles at the time of search was aboard the vehicle at the time of
entry into the jurisdiction of the United States. Any search by
Customs officials which meets this test is properly called a "border
search".

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1 *Sahanaja*, 430 F.3d at 1053-54. “Reasonable suspicion exists when an officer is aware of specific,
 2 articulable facts which, when considered with objective and reasonable inferences, form a basis for
 3 particularized suspicion.” *United States v. Tiong*, 224 F.3d 1136, 1139 (9th Cir. 2000). Factors to
 4 consider may include:

5 (1) characteristics of the area; (2) proximity to the border; (3) usual patterns of traffic
 6 and time of day; (4) previous alien or drug smuggling in the area; (5) behavior of the
 7 drive including obvious attempts to evade officers; (6) appearance or behavior of the
 8 passengers; (7) model and appearance of the vehicle; and (8) officer experience.

9 *Id.*

10 The boat’s driver, Defendant Ho, did not enter the United States at the port of entry at Port
 11 Angeles, but instead made entry at the Freshwater Bay Marina without making the required contact
 12 with immigration officials prior to landing in the United States. The earlier surveillance of the
 13 defendants as described at the suppression hearing, the defendants’ entry into the United States
 14 without reporting at an area other than a port of entry, the defendants’ conflicting stories about what
 15 they were doing, together with the experience of the agents involved is sufficient to conclude that
 16 under the totality of the circumstances, the agents had a reasonable suspicion of criminal activity
 17 sufficient to conduct a border search.

18 ***The Statements***

19 Defendant Wong also argues that his statements made to Agent Gleckman, must be
 20 suppressed. Agent Gleckman identified himself to Wong and asked him what was going on. Wong
 21 stated that

22 he and his friends were at the boat ramp to pick the boat up. Wong then told SA
 23 Gleckman that he and his friends did not travel with the boat down here, that the
 24 trailer was empty when they got here and then stated that he was just traveling with
 25 his friends and wasn’t sure what was happening.

26 (Def. Wong’s Memorandum, p. 10.) Defendant Wong argues that Agent Gleckman had identified
 27 himself to Wong, that the Agents’ truck was blocking the defendants’ truck from moving, that there
 28 were agents scattered around the scene, that Wong had not been given his *Miranda* rights, and that

1 the statements, therefore, must be suppressed.

2 The Ninth Circuit states the rule for determining the voluntariness of a statement:

3 “The test is whether, considering the totality of the circumstances, the government
4 obtained the statement by physical or psychological coercion or by improper
5 inducements so that the suspect’s will was overborne.” ... This totality of the
6 circumstances test was clarified and refined by the Supreme Court in *Colorado v.*
7 *Connelly*, 479 U.S. 157 (1986)(*Connelly*). There, the Court held that “coercive
8 police activity is a necessary predicate to the finding that a confession is not
9 “voluntary” within the meaning of the Due Process Clause of the Fourteenth
10 Amendment.” The Court emphasized that in the confession cases it had decided over
11 the previous 50 years, the “crucial element” had been the presence of “police
12 overreaching.” *Id.* at 163&n.1. Thus, the Court has made it clear that a confession is
13 only involuntary under the fourteenth amendment if the police use coercive activity to
14 undermine the suspect’s ability to exercise his free will.

15 *Derrick v. Peterson*, 924 F.2d 813, 317-18 (1990)(citations omitted).

16 In Wong’s circumstances, the crucial element of overreaching by the agents is lacking, and
17 the statements need not be suppressed.

18 NOW, THEREFORE, IT IS ORDERED: Motion of Defendant Ying Wai Wong to Suppress
19 [Dkt. # 89] is DENIED.

20 DATED this 16th day of May, 2007.

21 
22 FRANKLIN D. BURGESS
23 UNITED STATES DISTRICT JUDGE
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